

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

John Parks Simpson and Freda Simpson, wife,
Plaintiffs,

v.

Air Liquide America, LP, Celite Corporation,
Mine Safety Appliances Company, Porter
Warner Industries, LLC, Wesco Refractories,
Inc., and John Doe 1-5,

Defendants.

Civil Docket No. 3:09-cv-172

**PLAINTIFFS' AND DEFENDANT
WESCO REFRactories, INC.'S JOINT
MOTION FOR ENTRY OF CONSENT
ORDER VOLUNTARILY DISMISSING
DEFENDANT WESCO REFRactories,
INC. WITHOUT PREJUDICE**

Pursuant to Rule 41(a), Federal Rules of Civil Procedure, Plaintiffs and Defendant Wesco Refractories, Inc. ("Wesco") jointly move this Court for an order dismissing without prejudice Wesco as a party to this action and state as follows:

Plaintiffs instituted this product liability action, naming Wesco and a number of other parties as defendants. At this stage in the discovery process, Plaintiffs and Wesco have determined and agreed that Wesco should be dismissed without prejudice. Specifically, discovery thus far has produced no identification of any Wesco product that could have potentially caused Plaintiff John Parks Simpson's alleged injuries.

The voluntary dismissal of parties who have answered the Complaint requires a Court order pursuant to Federal Rule of Civil Procedure 41(a)(2). The parties respectfully submit that the Court should exercise its discretion in dismissing Wesco from this action because no product of Wesco's has been identified as being at issue in this litigation. Should such evidence emerge during further discovery, Plaintiffs intend to re-file their claims against Defendant Wesco as the rules permit. Accordingly, Plaintiffs and Wesco request that the Court enter the attached

proposed order designating this voluntarily dismissal as Plaintiffs' first voluntary dismissal of Wesco, which will not operate as an adjudication of the merits pursuant to Federal Rule of Civil Procedure 41(a)(1)(B).

CONCLUSION

For the foregoing reasons, Plaintiffs and Wesco respectfully request that this Court grant their Joint Motion to Voluntarily Dismiss Without Prejudice Defendant Wesco Refractories, Inc. and enter the proposed Order attached hereto.

Jointly and respectfully submitted this 1st day of July, 2010 by:

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CERTIFICATE OF SERVICE

I, Tracy L. Eggleston, hereby certify that the foregoing Joint Motion for Entry of Consent Order Voluntarily Dismissing Defendant Wesco Refractories, Inc. Without Prejudice was served on all counsel of record this 1st day of July, 2010, by electronic means addressed as follows:

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